IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 664 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

and

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHANKARBHAI BIJALBHAI RAVAL

Versus

STATE OF GUJARAT

Appearance:

MR KR RAVAL for Appellant

MR MA BUKHARI APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

and

MR.JUSTICE A.L.DAVE

Date of decision: 05/12/2000

ORAL JUDGEMENT (Per : MISS JUSTICE R.M.DOSHIT)

This appeal arises of the judgment and order dated 1st June, 1993, passed by the learned Additional Sessions Judge, Nadiad, in Sessions Case No. 7/92. The appellant before this court is accused. The appellant has been convicted for offences punishable under sections 302 and 498-A IPC, and has been sentenced with imprisonment for life for the offence punishable under section 302 IPC, and with imprisonment for one year and a fine of Rs.500/- for the offence punishable under section 498-A IPC. In case of default in payment of fine, the appellant has been sentenced with imprisonment for two months. The substantive sentences are ordered to run concurrent.

The appellant-accused was charged for committing murder of his wife Suryaben on 18th June, 1990 i.e. some time after the mid-night of 17th June, 1990 and 1-00 O'clock of 18th June, 1990. The murder is alleged to have been committed in presence of the father, the brother and the sister-in-law of the deceased Suryaben. The father of the deceased Suryaben i.e. Zenabhai Chhaganbhai lodged the complaint at around 8-30 in the morning of 18th June, 1990. According to him the deceased Suryaben was married to the accused some three years before the date of incidence, and had a son aged - 1 1/2 years. The deceased Suryaben had strained relationship with her husband, the accused Shankarbhai Bijalbhai, and there were frequent quarrels. The accused Shankarbhai used to beat his wife Suryaben. The exasperated Suryaben, therefore, had gone away to reside with her parents. However, after a month, the accused Shankarbhai went to fetch Suryaben and after he gave a written assurance that he would not beat Suryaben, Saryuben was allowed to go with her husband. She was hesitant to go to her matrimonial house at Thavad. She went to Thavad on 27th May, 1990. After a month or so, on 17th June, 1990, the complainant, his son Ravjibhai and his daughter-in-law Kaliben came to village Thavad to meet the other daughter of the complainant one Kailasben, who too was married and was residing at village Thavad. On the same day in the afternoon, the complainant and two others i.e. Ravjibhai and Kaliben had visited Suryaben at her house. However, the accused Shankarbhai took up a quarrel and asked them to go away. After the said persons went away to the House of Kailasben, after supper, at around mid-night, they heard the shouts of Suryaben. They immediately approached the house of

Suryaben where she was being beaten by her husband-Shankarbhai, Shankarbhai however challenged them not to interfere. All the three thereafter returned to the house of Kailasben. Once again on hearing shouts of Suryaben, they came to the house of the deceased Suryaben. Suryaben was lying dead. She was tied with the rope in the neck and the leg and was dragged and the accused-Shankarbhai had beaten her on the stomach. Pursuant to the complaint lodged by Zenabhai (PW-2), the investigation was taken up by Shri Amuji Bhavanji Chavda (PW-9) PSI, Kapadvanj Rural Police Station.

On perusal of the evidence on record, we find that there are discrepancies in material particulars in the statements made by the complainant in the complaint and his oral evidence, and also the oral evidence of three eye witnesses i.e. Zenabhai Chhaganbhai (PW-2), Ravjibhai Zenabhai (PW-3) and Kaliben Ravjibhai (PW-4). In the complaint Zenabhai has stated that on hearing the shouts of Suryaben for help, he and his son went to the house of Suryaben. At that time, a rope was tied on the neck of Suryaben by her husband and he was opening the same. Having seen Zenabhai and his son Ravjibhai, he left Suryaben loose and Suryaben ran out side. Her husband followed her and caught hold of her saree, on account of which Suryaben fell down. At that time, the accused Shankarbhai beat her on the stomach and strangulated her. Suryaben died instantaneously. However, in his oral testimony, he has stated that when he went to the house of Suryaben, she was lying dead, she was beat in the stomach and rope was tied to her neck. A rope was tied to her leg also and she was being dragged by the accused Shankarbhai. The eye witness Shankarbhai (PW-3) has stated that it was he and his wife Kaliben who had gone to the house of Suryaben and when they reached there, her husband was dragging her outside and was also beating on the stomach, rope was tied around her neck. She was lying at that time, but she died because Shankarbhai strangulated her. He has denied that his father had gone to the house of Suryaben along with him and his wife Kaliben. The eye witness (PW-4) has stated that hearing the shouts of Suryaben, she and her husband and her father-in-law went to the house of Suryaben, a rope was tied to the neck of Suryaben and she was being beaten by the accused Shankarbhai in stomach. She was dragged out side and was strangulated by the accused Shankarbhai. Suryaben had died on the spot. Thus, the evidence of all the three eye witnesses in connection with the actual happening of the incidence is at variance. In the inquest panchnama, the body of Suryaben was found lying on the open land out side the house some

65 ft. away from her house. No mark of her being dragged from her house were found on the earth, no rope has been found from her body. No external injuries either on the leg or on the stomach were found. In the Panchnama of scene of the offence, a rope has been found hanging on the wooden guarder of the house of Suryaben. In the Postmortem report, no external or internal injuries have been found on the stomach of the deceased Suryaben. No ligature marks have been found on her leg. The only injury found on her body was that of a ligature mark on her neck. She has been reported to have died of " asphyxia due to strangulation. "

We regret to note that there are several loose ends in the investigation made by the police which are not explained. If the deceased Suryaben were tide with the rope on the neck and the leg, no rope has been found from her body. The prosecution has not explained the presence of the rope in the house. No marks have been found on the earth which would suggest Suryaben having been dragged as stated by the eye witnesses. The behaviour of the eye witnesses also does not seem to be natural in as much as if Suryaben were being beaten by her husband as stated by the eye witnesses, they being the close relatives of Suryaben, would not leave the place of offence, but would help Suryaben. Even on their second visit when according to them Suryaben was being dragged, they were just silent watchers. The first reaction would be to intervene and to try to get Suryaben free from her husband. We are, therefore, unable to believe the statements made by the three eye witnesses. If the eye witnesses are not believed, there is no other evidence which would connect the death of Suryaben to the accused Shankarbhai. No investigation has been made in case Suryaben had committed suicide, to ascertain whether the accused Shankarbhai was responsible for the same. We are, therefore, of the opinion that the prosecution has failed to establish the guilt of the accused Shankarbhai beyond reasonable doubt. The prosecution has failed to putforth sufficient evidence to prove the guilt of the accused Shankarbhai. The conviction of the accused-appellant Shankarbhai recorded by the learned trial Judge and the sentence passed upon him are quashed and set aside. The accused-appellant Shankarbhai Bijalbhai is acquitted of the charge framed against him.

The appeal is accordingly allowed. The muddamal articles be disposed of as directed by the learned trial Judge.

(MS R.M.DOSHIT J)

(R.L.DAVE J)

JOSHI